

The admission would vary the Court rule. But the judges answer to the objection is that it cannot so. But by the back action of the street law of 1843, it is provided that all proceedings in the Court shall be conducted by the Court, and in the amendment, and by the existing act of 1846 it is provided that no case, whether civil or criminal, shall be argued unless the same shall be referred by the Court after full notice. It is provided, therefore, that the Court shall proceed judicially, and not arbitrarily. It is concluded, therefore, in the present matter.

Trusting, however, either of the above cases as the standard, I do not feel, in going over all the cases, to have submitted to the Court, and to have the Report to be introduced to the amount of a majority, have objected to all further proceedings. I was not authorized, therefore, on the mere *de jure* of the objections, to order a case to be argued, and to have the Court to decide that they should assign other and better reasons than mere will and pleasure, and their counsel have accordingly done so.

It is contended, then, among other difficulties suggested, that the Court, in the present case, have exceeded their charge the widening of Walker's street, and to carry it to East Broadway, was illegal; that Commissioners having been appointed by the Court under the resolution as originally passed, and that the Court, in the present case, had no authority of the Common Council, so as to deprive them of all

This objection, if at any time available, cannot now be raised, unless its character be such as to direct the jurisdiction of the court. It is not a question of law, but of fact, and will not stand. What, then, are the facts out of which it arises?

The proposed improvement, as described in the original resolution of 1842, was objectionable in two particular *First*: At the easterly end, although intended to connect with Rutgers' as a continuous avenue of seventy feet in width, it was to be a narrow, crooked, and crooked street, leaving a projection which was both unsightly and inconvenient. *Second*: At the westerly end, it was necessarily made a triangular public place between Centre and Rutgers streets, and the lot was to be sold at the same cost without a corresponding increase in the benefit of the improvement.

When the report of the Commissioners, made under the act of 1842, came before me about eighteen months ago, these and other defects were discovered in the proceedings. With the approbation solemnly of all parties, the report was referred to the Board of Commissioners, and the planning was referred to new Commissioners, appointed by the Court at the instance and with the concurrence of every interest.

It was the duty of matters the Corporation, by the terms of the law, had absolute right to discontinue the existing proceeding and to institute an entirely new one. On that point

The counsel accordingly gave the required legal notice of an intended application for the appointment of Commissioners to carry out the proposed improvement as amended—a notice of the same duration and given in the same manner, in all respects, as if it had been an original proceeding. To save expense, and for greater convenience, by order of the Court the same Commissioners were appointed to hear and decide the application. No further notice was required to be given.

any steps taken by any one to acquiesce in the order thus issued, or in any manner to test its validity, or to arrest its execution. On the contrary, the parties appeared before the Commissioners, thus appointed, contending some of them that they were assessed too much, and others of them that they were awarded too little, and exercising (I may say insisting on)

and adjusting the plan of the report. And now after an additional expense of between five and ten thousand dollars has been incurred, in an endeavor to make the measure satisfactory, and to correct all, even of its minor details, shall the will of the majority be defeated, the whole proceeding overthrown, and the whole cost of the abortion cast on the City Treasury, upon technical reasoning, no way connected, as I conceive, with any question of abstract justice or injustice, and so refined as to be unappreciable without the aid of a professional microscope.

In the case of Doughty against Hope, the Court of Ap-

What possible object, except a great increase of expense was to be gained by doubling the Commissioners and doubling the proceedings. The parties, it is said, who are merely brought in by the change in the improvement, are saddled with a part (obviously a small part of the previously incurred expense. But are

of the previously performed services? For aught that appears—indeed, I think it clearly appears—their share of the costs and charges of the combined proceedings is less than would have been the whole amount likely to be in-

all events, on this point, if there were anything to urge, it should have been presented on the taxation. Objectionable items, if any there were, should then have been pointed

As the matter now stands on the application to confirm the Commissioners' report, all the items charged and taxed must be viewed as admitted by the parties to be just and proper. Such is the established rule of the Court resting on the plainest principles of justice and convenience. If a party having—or deeming himself to have—a defense neglects to avail himself of it at the proper time, and permits a judgment for the taxation in its nature is a judgment which he cannot afterwards set aside.

Again, it is contended by the counsel for the objectors that great doubts at least exist in reference to the legality of these proceedings, and that, if consummated, "enormous" and "almost endless litigation" must attend the enforcing of the assessments. I have weighed this consideration. It is a grave one, as the decision in the case of Doughty and Hope, and all the lamentable consequences of that decision, abundantly show.

matter—it says imperatively that the Court, after hearing whatever may be alleged to the contrary, shall either confirm the report, or refer it back for revial. To refer it back, it is obvious, would not remedy the objection. I have no other alternative therefore but to confirm; leaving it to the counsel of the Corporation, should he deem advisable.

No far as the assessments are concerned they are a special local tax, for a special local benefit, and which therefore it is perfectly competent to the Legislature to impose. As to the amounts, they are an ascertainment, within the provision of the Constitution, "by not less than three

Commissions are made for the property taken for the public use, and it is equally competent to the Legislature, therefore, in reference to *them*, to enact that, upon their payment, or the effectual provision for their payment, as thus ascertained, the property to be taken shall vest in the City as a public street. The only Constitutional restriction in the Legislature in the taking of private property for public use, is to use that property done without just compensation, and that compensation has been fairly made, either by a jury or commissioners of the City as the Legislature may deem proper. The Legislature, therefore, in such a case as the present, if deemed advisable to prevent litigation, might, it seems to me, be passed by the Legislature, without trenching, either upon the letter or the spirit of the Constitution.

At an event, viewing the matter as a whole, the law is imperative. It declares, and such must be the order of the Court, that the "Report shall be confirmed."

U. S. COMMISSIONER'S OFFICE.—George J. W. NELSON, Esq.
EXTRADITION CASE.
The examination in the case of Alexander Hollbourn,
claimed by the British Government, under the Ashburton

been sat down for Saturday, and the parties appeared, a lady who was in company with defendant on his arrival, also being present. Mr. Whiting was counsel for application and Mr. Busted for defense.

Mr. Whiting moved that the examination be deferred till after the arrival of the next steamer. This was opposed by Mr. Busted, who demanded that the examination proceed. The Commissioner finally concluded to postpone the examination—and it was so to 10th inst.

THE POLICE COMMISSIONERS at the City Hall for the purpose of investigating charges against policemen for dereliction of duty, &c. Present, Recorder Tillou and Mayor Westervelt. The following cases were tried:

JEREMIAH W. HARTT, Seventeenth Ward.—Charge—Conduct unbecoming an officer. Specification—1st. That said Hartt, as different times and on divers occasions conveyed interesting liquor into the Southern lane of the Seventeenth Patrol District and hence into the same, in violation of Section 4 of the Rules and Reg-

Thomas Stansfeld, being duly sworn, says that up to last Friday, the 23rd of November, he was second Lieutenant of the XVth Police Battalion in the City, and was shown the document referred to, and that the same was in good order. He is a German subject, and was born at Berlin, in the Kingdom of Prussia. He is a married man, and has a wife and three children. He is a native-born subject of the Kingdom of Prussia. He is a native-born subject of the Kingdom of Prussia. He is a native-born subject of the Kingdom of Prussia.

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